

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

Ref.: UA IRN 20/2022
(Please use this reference in your reply)

4 October 2022

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, pursuant to Human Rights Council resolutions 42/22, 42/16, 43/16 and 49/24.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest, detention, imprisonment and deterioration of the health condition of human rights defender **Mr. Behnam Mousivand**, who underwent hunger strike to protest his detention conditions and his transfer to a prison in a distant location from his family.

Concerns at the transfer of human rights defenders and political prisoners to prisons in distant locations have been the subject of a communication sent by Special Procedures on 27 May 2021 (ref. number IRN 14/2021). Concerns at the denial of appropriate and timely medical attention to individuals in detention have been the subject of a communication sent by Special Procedure on 22 February 2021 (ref. number IRN 6/2021). We thank your Excellency's Government for the responses, but remain concerned that the violations continue.

According to information received:

Mr. Behnam Mousivand is a human rights defender who has been imprisoned several times, including in 2009, 2014, and 2016 in connection with his peaceful defense of the rights of prisoners and children in the Islamic Republic of Iran. He has taken part in humanitarian projects in areas affected by earthquakes in the country.

Mr. Mousivand was arrested on 1 February 2018 in connection with his participation in the nationwide protests in December 2017/January 2018 in the Islamic Republic of Iran. He was held in Section 209 of Evin prison in the province of Tehran, under the control of the Ministry of Intelligence. He did not have access to a lawyer during this period. On 19 March 2018, he was released on bail.

In September 2019, branch 28 of the Islamic Revolution Court in the province of Tehran sentenced Mr. Mousivand to five years in prison on the charge of

“gathering and collusion to act against national security” and one year in prison on the charge of “propaganda against the state.” According to article 134 of the Islamic Penal Code, Mr. Mousivand must serve the longest of the sentences received, which is five years. Branch 36 of the Tehran Court of Appeals upheld his conviction and prison sentence. Mr. Mousivand was arrested on 15 June 2021 to begin serving his prison sentence.

Mr. Mousivand has medical conditions related to his liver and kidneys, which require specialized medical care. Mr. Mousivand has reportedly been denied timely medical care and the prison authorities have cancelled his medical appointments two times because he refused to wear handcuffs and ankle cuffs. Article 73 of the Prisons Regulations of the Islamic Republic of Iran states that political prisoners should not be forced to wear prison uniforms. In January 2021, the State Prisons Organization issued a directive prohibiting the transfer of political prisoners in uniform and cuffs for hospitalization.

On 19 April 2022, the prison guards subjected Mr. Mousivand to beatings after he refused to be transported in handcuffs and ankle cuffs to hospital. On the same day, Mr. Mousivand started a hunger strike in protest at the denial of timely medical care and prison condition. On 25 April 2022, he was admitted to a hospital due to his worsening health condition. On 5 May 2022, Mr. Mousivand agreed to end his hunger strike after he was promised regular medical check-ups for his health condition. However, on 10 May 2022, the prison authorities transferred Mr. Mousivand back to Evin prison despite medical advice.

On 31 August 2022, Mr. Mousivand started a hunger strike in protest at his transfer from Evin prison in the province of Tehran to the Raha’i Shahr prison in the province of Alborz on 30 August 2022. Mr. Mousivand was subjected to beating by prison authorities during the transfer. On 4 September 2022, Mr. Mousivand’s health condition deteriorated. He had gastrointestinal bleeding and vomited blood. The request for medical care for Mr. Mousivand was ignored by prison authorities. Finally, on 11 September 2022, Mr. Mousivand was transferred to a hospital after his health condition severely deteriorated.

On 14 September 2022, Mr. Mousivand ended his hunger strike after receiving assurances from the authorities that his requests for adequate and effective medical treatment would be granted.

Without prejudging the accuracy of the received information, we express serious concern at the arrest and detention of Mr. Mousivand which appear to be directly related to his advocacy on the protection and promotion of human rights. We express concern at the use of repressive legislation to criminalize the exercise of the rights to freedom of opinion and expression and of peaceful assembly in ways that are incompatible with the Islamic Republic of Iran’s obligations under international human rights law. We express grave concern regarding Mr. Mousivand’s physical and mental well-being in prison, especially reports that he underwent hunger strike in protest against the condition of detention. We are also concerned at the underlying

reasons for Mr. Mousivand's decision to go on hunger strike and the deterioration of his health condition. We are also concerned about the increasing number of prisoners who have been on hunger strike to protest their detention conditions.

Without expressing at this stage an opinion on the facts of the case and on whether the reported detentions was arbitrary, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the detained person in this case not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Islamic Republic of Iran on 24 June 1975.

In this connection, we recall that the Human Rights Committee in General Comment No. 35 affirms that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), and freedom of assembly (art. 21) and freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17). Furthermore, the jurisprudence of the Working Group on Arbitrary Detention confirms the same.

Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Furthermore, Article 10 of the ICCPR provides that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

We wish also to refer to articles 19 and 21 of the ICCPR which guarantee the right to freedom of opinion and expression and of peaceful assembly. As indicated by the Human Rights Committee, attacks against individuals for exercising their right to freedom of expression, including through arbitrary detention, torture, inhuman or degrading treatment or punishment, and enforced disappearance is incompatible with the ICCPR, see CCPR/C/GC/34 para. 23. In this connection, we highlight that the value placed by the ICCPR on uninhibited expression is particularly high in the area of political discourse, and about figures in the political domain and in public institutions (CCPR/C/GC/34, para. 38).

We also remind that States have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their lives and bodily integrity, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility. The duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriate regular monitoring of their health. A heightened duty to protect the right to life also applies to individuals quartered in liberty-restricting State-run facilities, such as mental health facilities (General Comment 36).

We would like to further refer your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Iran on 24 June 1975, which establishes that an obligation to respect the right to health by,

inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services (Committee on Economic, Social and Cultural Rights, CESCR General Comment 14, para. 34). We would also like to specifically highlight article 12(2)(c), which obliges States to take the steps necessary for “the prevention, treatment and control of epidemic, endemic, occupational and other diseases” (see also CESCR General Comment 14, para. 16). In addition, we would like to underline the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in resolution 45/111, according to which prisoners should have access to health services available in the country without discrimination on the grounds of their legal situation (Principle 9).

We also draw your attention to the UN Standard Minimum Rules for the Treatment of Prisoners (reviewed on 17 December 2015 and renamed the “Mandela Rules”), in particular to Rule 24 that establishes that the provision of health care for prisoners is a State responsibility and that the state should ensure continuity of medical treatment for chronic conditions; Rule 27(1), which provides that all prisons shall ensure prompt access to medical attention in urgent cases, as well as Rule 58 which establishes that prisoners shall be allowed to communicate with their family and friends at regular intervals.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Mr. Mousivand in compliance with international instruments.

We are issuing this appeal in order to safeguard the rights of abovementioned individual from irreparable harm and without prejudicing any eventual legal determination.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for the observations of your Excellency’s Government on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide information on the legal and factual grounds invoked for the arrest, detention and imprisonment of Mr. Mousivand and explain how these are compatible with international law.
3. Please provide information concerning any steps that have been taken to ensure that Mr. Mousivand, had adequate access to medical healthcare services and receives all the medical attention and medication that he requires.

4. Please provide information concerning the legal grounds for the transfer of Mr. Mousivand to a prison distant from his family.
5. Please provide information with regards to the current health condition of Mr. Mousivand, along with information on what steps have been taken to guarantee the physical and psychological integrity of Mr. Mousivand.
6. Please provide information on steps taken by your Excellency's Government to ensure that human rights defenders and civil society are able to carry out their legitimate and peaceful work in an enabling environment without threats, intimidation, attacks or criminalization of any kind.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Javaid Rehman
Special Rapporteur on the situation of human rights in the Islamic Republic of Iran